



# California Regional Water Quality Control Board

## San Francisco Bay Region



Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov>  
1515 Clay Street, Suite 1400, Oakland, California 94612  
Phone (510) 622-2300 • FAX (510) 622-2460

Gray Davis  
Governor

Date: DEC 03 2002

File No. 2139.3003(ES)

CERTIFIED MAIL NO. 70020860000530607947  
RETURN RECEIPT REQUESTED

Mr. Steve Anderson  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515

Subject: Mandatory Minimum Penalty Assessed Under Water Code Sections 13385(h) and (i)

Dear Mr. Anderson:

Enclosed is Complaint No. R2-2002-0015. The Complaint alleges that there were 29 effluent violations of your NPDES permit limits during the period between January 1, 2000 and March 31, 2002. The details of these violations are summarized in Table 1 of the Complaint. Twenty-three of these violations are subject to mandatory penalties under Sections 13385(h) and (i) of the California Water Code for a total penalty of \$69,000.


I plan to bring this matter to the Regional Board at its January 22, 2003 meeting. You have three options:

1. You can appear before the Board at the meeting to contest the matter. Written comments are due by January 2, 2003. At the meeting the Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the case to the Attorney General to have a Superior Court consider imposition of a penalty.
2. You can waive the right to a hearing by signing the last page of the Complaint and checking the first box. There will be no hearing on this matter, provided no significant public comment is received by Board staff prior to close of the comment period. By doing so, you agree to pay the liability within 30 days of the signed waiver becoming effective.
3. You can waive the right to a hearing and agree to undertake a Supplemental Environmental Project (SEP) by signing the Waiver and checking the second box. There will be no hearing on this matter, provided no significant public comment is received by Board staff prior to close of the comment period. By doing so, you agree to complete a SEP in lieu of paying a suspended amount of up to \$42,000 of the penalty and remit the balance of the fine to the State Water Pollution Cleanup and Abatement Account within thirty days of the signed waiver becoming effective. Note that the SEP must be acceptable to the Executive Officer of the Board. If the Executive Officer determines that, either SEP proposal is not acceptable, or the SEP is not adequately completed within

the approved time schedule, you will be required to pay the suspended liability within 30 days of notification by the Regional Board. Please mail and fax a copy of the signed waiver to Eddy So's attention at (510) 622-2418 no later than January 2, 2003.

If you have any questions please call Eddy So at (510) 622-2418.

Sincerely,

  
Loretta K. Barsamian  
Executive Officer

Encl.: Complaint No. R2-2002-0015

Cc: Greg Walker, RWQCB  
James Nusrala, RWQCB

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**COMPLAINT NO. R2-2002-0015**

**MANDATORY MINIMUM PENALTIES  
IN THE MATTER OF  
CITY OF CALISTOGA  
NAPA COUNTY**

Pursuant to California Water Code Section 13385, this Complaint is issued to the City of Calistoga (hereinafter the Discharger) to assess mandatory minimum penalties to, based on a finding of violations of Waste Discharge Requirements Order Nos. 92-062 and 00-131 (NPDES No. CA0037966) known to the Regional Board for the period between January 1, 2000 and March 31, 2002.

The Executive Officer finds the following:

1. On June 17, 1992, the Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), adopted Waste Discharge Requirements Order No. 92-062 to regulate discharges of waste from the Discharger's treatment plant, which provides tertiary level treatment of municipal wastewater from domestic and commercial sources within the City of Calistoga. The Discharger's facility is a publicly owned treatment work (POTW).
2. The discharge of treated effluent to the Napa River during the wet weather is governed by the NPDES permit, which prohibits any discharge to the Napa River during the dry weather. During the wet weather, treated effluent is discharged to a non-tidal reach of the Napa River through two submerged outfalls extending from the eastern bank of the river. Outfall E-1 is for the discharge of tertiary-treated effluent, and outfall E-2 is for the discharge of secondary-treated effluent.
3. On November 29, 2000, the Regional Board adopted Waste Discharge Requirements Order No. 00-131, which superseded Order No. 92-062, to continue regulating the discharges of treated wastewater from the two outfalls. Provision 20 of the Order states Order No. 00-131 becomes effective 10 days after its adoption.
4. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation.
5. Water Code Section 13385(h)(2) defines a "serious violation" as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
6. Water Code Section 13385(i) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six consecutive months:
  - a) Violates a waste discharge requirement effluent limitation.
  - b) Fails to file a report pursuant to Section 13260.
  - c) Files an incomplete report pursuant to Section 13260.

- d) Violates a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
7. Water Code Section 13385(k) allows the Regional Board to elect to require a POTW serving a small community<sup>1</sup>, as defined in Water Code Section 79084, to spend an equivalent amount of all or a portion of the mandatory penalties toward the completion of a compliance project (CP) proposed by the POTW, if the state or regional board finds all of the following:
- a) The CP is designed to correct the violations within five years.
  - b) The CP is accordance with the enforcement policy of the state board.
  - c) The POTW has demonstrated that it has sufficient funding to complete the CP.
8. Water Code Section 13385(l) allows the Regional Board, with the concurrence of the discharger, to direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP) in accordance with the Water Quality Enforcement Policy (Enforcement Policy) adopted by the State Water Resources Control Board (State Board) on February 19, 2002. The maximum penalty amount that may be expended on a SEP may not exceed \$15,000 plus 50 percent of the penalty amount that exceeds \$15,000.
9. Effluent Limitations
- a) Order No. 92-062 includes, in part, the following effluent limitations for effluents discharged from outfalls E-1 and E-2:

Parameter	Type of Limit	Outfall E-1 Discharge	Outfall E-2 Discharge
pH		Not less than 6.5 or greater than 8.5	Not less than 6.5 or greater than 8.5
Total coliform Organisms	Daily maximum (MPN/100 mL)	240	240
	Moving median of 5-sample (MPN/100 mL)	Not applicable	23
	Moving median of 7-sample (MPN/100 mL)	2.2	Not applicable
Biochemical oxygen demand (BOD)	Daily maximum (mg/L)	20	60
	Monthly average (mg/L)	10	30
	Percentage removal (%)	Minimum 85	Minimum 85

<sup>1</sup> California Water Code Section 79084 defines a small community as including a municipality with a population of 10,000 persons or less with a financial hardship as determined by the State Board. The Enforcement Policy, adopted on 2/19/2002, defines financial hardship as when the median annual household income for the community is less than 80% of the California median annual household income. The Enforcement Policy further defines that "median annual household income" means the median annual household income of the community based on the most recent census data or a local survey approved by the State Board.

Year-2000 census data show that the City of Calistoga has a population of 5,200 persons and a median annual household income of \$25,000 in year 2000. The median annual household income of the State of California in year 2000 is \$46,900. \$25,000 is less than 80% of \$46,900 (which equals to \$37,520), and thus, the Discharger meets the definition of "small community" that has a financial hardship.

Parameter (cont'd)	Type of Limit	Outfall E-1 Discharge	Outfall E-2 Discharge
Total suspended Solids (TSS)	Daily maximum (mg/L)	30	60
	Monthly average (mg/L)	15	30
	Percentage removal (%)	Minimum 85	Minimum 85
Oil & Grease (O&G)	Daily maximum (mg/L)	10	20
	Monthly average (mg/L)	5	10
Bioassay toxicity	Percentage survival (%)	Minimum 70	Minimum 70

- b) Order No. 00-131 includes, in part, the following effluent limitations for effluents discharged from outfalls E-1 and E-2:

Parameter	Type of Limit	Outfall E-1 Discharge	Outfall E-2 Discharge
pH		Not less than 6.5 or greater than 8.5	Not less than 6.5 or greater than 8.5
Total coliform bacteria	Daily maximum (MPN/100 mL)	240	240
	Moving median of 5-sample (MPN/100 mL)	23	23
Biochemical oxygen demand (BOD)	Daily maximum (mg/L)	20	60
	Monthly average (mg/L)	10	30
	Percentage removal (%)	Minimum 85	Minimum 85
Total suspended solids (TSS)	Daily maximum (mg/L)	30	60
	Monthly average (mg/L)	15	30
	Percentage removal (%)	Minimum 85	Minimum 85
Oil & Grease (O&G)	Daily maximum (mg/L)	10	20
	Monthly average (mg/L)	5	10
Cyanide	Daily maximum (µg/L)	8.2	8.2

#### 10. Summary of Effluent Limit Violations

During the period between January 1, 2000 and March 31, 2002, the Discharger had 29 violations of effluent limitations contained in its NPDES permit. These include 5 violations of oil and grease effluent limits, 6 violations of total suspended solids effluent limits, 5 violations of biochemical oxygen demand effluent limits, 7 violations of total coliform effluent limits, 1 violation of the pH effluent minimum limit, 2 violations of the cyanide effluent limit, and 3 violations of the bioassay toxicity minimum survival effluent limit. The details of these effluent limit violations are summarized in the attached Table 1, which is incorporated herein by reference. Because two different Board Orders regulated the effluent discharged from the wastewater treatment plant during the period covered by this Complaint, effluent limit violations were summarized under the applicable Board Orders and time periods.

11. Oil and grease is Group I pollutant

All five exceedances of oil and grease daily maximum and monthly average limits (items 1, 2, 9, 15, and 17 in the Table 1) are serious violations, as these violations are 40% or greater than the corresponding effluent limitations. Each of these five serious violations is subject to \$3,000 fine, with the total penalty amount for these violations being \$15,000.

12. Total suspended solids is Group I pollutant

a) Two violations of the total suspended solids effluent limit (items 18 and 29 in the attached table) are serious violations, as the exceedances are 40% or greater than the corresponding limits. Each of these two serious violations is subject to \$3,000 fine, and the total penalty amount for these serious violations is \$6,000.

b) The four exceedances of the total suspended solids monthly average and percentage removal limits (items 7, 8, 21 and 24 in the attached table) are non-serious violations, as these violations are less than 40% of the corresponding effluent limitations. Only one violation (item 21) is exempted from penalty because it is the third non-serious violation in the corresponding six-month period. Therefore, the total penalty amount for these non-serious violations is \$9,000.

13. Biochemical oxygen demand is Group I pollutant

a) One violation of the biochemical oxygen demand monthly average limit (item 28 in the attached table) is a serious violation, as the exceedance is 40% of the corresponding limit. This serious violation is subject to \$3,000 fine.

b) The four exceedances of the biochemical oxygen demand monthly average and percentage removal limits (items 16, 19, 20, and 23 in the attached table) are non-serious violations, as these violations are less than 40% of the corresponding effluent limitations. Because three of these violations are within the first three non-serious violations in their corresponding six-month periods and are exempt from mandatory minimum penalty, the total penalty amount for these non-serious violations is \$3,000.

14. Total Coliform is neither a Group I nor Group II pollutant

The seven exceedances of total coliform daily maximum and 5-sample median effluent limits (items 6, 10, 11, 12, 13, 26 and 27 in the attached table) are non-serious violations. Because none of these violations are within the first three non-serious violations in their corresponding six-month periods, all are subject to \$3,000 fine for each violation. The total penalty amount for these non-serious violations is \$21,000.

15. pH is neither a Group I nor Group II pollutant

The one exceedance of the pH effluent minimum limit (item 14 in the attached table) is a non-serious violation. Because it is the first non-serious violation in the corresponding six-month period and is therefore exempt from mandatory minimum penalty.

16. Cyanide is a Group II pollutant

The two exceedances of the cyanide daily maximum effluent limit (items 22 and 25 in the attached table) are non-serious violations, as the exceedance in each case is less than 20% of the limit. Because none of these violations are within the first three non-serious violations in their corresponding 180-day periods, both are therefore subject to \$3,000 fine for each violation. The total penalty amount for these non-serious violations is \$6,000.

17. Bioassay Toxicity is neither a Group I nor Group II pollutant

The three exceedances of the bioassay toxicity minimum survival limit (items 3, 4, and 5 in the attached table) are non-serious violations. Only one violation (item 3) is exempt from mandatory minimum penalty because it is the third non-serious violation in the corresponding 180-day period. Therefore, the total penalty amount for these non-serious violations is \$6,000.

18. Water Code Exception

Water Code Section 13385(j) provides some exceptions related to the assessment of mandatory penalties for effluent limit violations. None of the exceptions applies to the violations cited in this Complaint.

19. Mandatory Minimum Penalty Assessment

The total mandatory minimum penalty for the twenty-three of the 29 effluent limit violations described in Findings 10 through 17 are \$69,000.

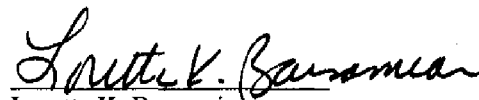
20. Suspended Mandatory Minimum Penalty Amounts

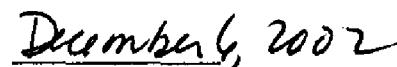
- a) Instead of paying the full penalty amount, the Discharger may spend an amount of up to \$42,000 on a SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete a SEP will be permanently suspended.
- b) In addition to the penalty amount suspended for the SEP as indicated in (a) above, the Discharger may also spend the remaining balance of \$27,000 on a CP, as described in Water Code Section 13385(k) and the Enforcement Policy. Specifically, the Discharger may undertake the CP described in its November 15, 2002 proposal to install a dissolved oxygen (DO) monitoring and control system for its aeration process. The proposed CP, which consists of the procurement and installation of four DO meters and the development of a DO control program, is to improve the performance of the aeration units to enhance the treatment plant's compliance with the BOD limitations. It is a plant upgrade project designed to correct the BOD violations addressed in this Complaint. The Discharger indicated that the CP could be completed within a few weeks, which is well within the five-year time period specified in Water Code Section 13385(k). The Discharger further confirmed that it has sufficient fund to complete the CP, as the treatment plant has between \$30,000 and \$100,000 in capital improvement funds approved by the City Council. The proposed CP complies with the conditions A and C of Section X of the Enforcement Policy.

**THE CITY OF CALISTOGA IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a mandatory minimum penalty in the amount of \$69,000.
2. The Regional Board will hold a hearing on this Complaint on January 22, 2003, unless the Discharger waives the right to a hearing by signing the last page of this Complaint and check the appropriate box. By doing so, the Discharger agrees to:
  - (a) Pay the full penalty of \$69,000 within 30 days after the signed waiver becomes effective, or
  - (b) Satisfactorily complete an approved SEP in the amount equivalent to a maximum of \$42,000. Pay a penalty of the balance within 30 days after the signed waiver becomes effective. The sum of the SEP amount, and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$69,000, or
  - (c) Satisfactorily complete an approved SEP in an amount equivalent to \$42,000 and spend the remainder, \$27,000, on the CP described in its November 15, 2002, proposal.

3. If the Discharger chooses to propose a SEP, it must submit the proposal by January 2, 2003 to the Executive Officer for approval. Any proposal for the SEP shall also conform to the requirements of the Enforcement Policy. If the proposal is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended penalty for the SEP. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.
4. If the Discharger chooses to proceed with the CP described in its November 15, 2002 proposal, then the Discharger shall expend \$27,000 to complete the CP in a timely manner, no later than one year from the effective date of the signed waiver. The Discharger shall submit a completion report for the CP to the Executive Officer within 60 days of project completion. The Executive Officer reserves the right to extend the deadline for completion of the CP provided the Executive Officer determines that the delay is beyond the reasonable control of the Discharger. If the Discharger satisfactorily completes the CP, then the suspended amount for the CP is permanently suspended; otherwise, the suspended amount becomes due and payable to the State Water Pollution Cleanup and Abatement Account within 30 days of receipt of notice by the Executive Officer that the CP has not been satisfactorily completed. Nothing stated herein relieves the Discharger of its obligation to take necessary actions to achieve compliance with its permit.
5. The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.
6. If a hearing is held, the Regional Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider imposition of a penalty.

  
Loretta K. Barsamian  
Executive Officer

  
Date



## WAIVER

(The signed waiver will become effective upon closure of the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.)

- ☐ Waiver of the right to a hearing and agree to make payment in full.  
By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2002-0015 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.
  
- ☐ Waiver of the right to a hearing and agree to make payment and undertake a SEP.  
By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2002-0015, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$42,000. I also agree to remit payment of \$27,000 to the State Water Pollution Cleanup and Abatement Account within 30 days after the signed waiver becomes effective. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the SEP within 30 days of a letter from the Executive Officer denying the approval of the proposed SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer.
  
- ☐ Waiver of the right to a hearing and agree to undertake a SEP and the CP  
By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2002-0015, and to complete (1) a SEP for an equivalent amount of suspended liability up to \$42,000 and (2) the \$27,000 compliance project (CP), as described in our November 15, 2002 letter and in accordance with the requirements set forth in the Complaint. With respect to SEP, I understand that the proposal for the SEP shall conform to the requirements specified in the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal is not acceptable to the Executive Officer and upon receipt of the Executive Officer's letter denying the proposed project, I agree to pay the suspended liability of the SEP within 30 days of a letter from the Executive Officer denying the approval of the proposal(s). I understand that failure to adequately complete the approved SEP will require payment of the suspended amount to the State Water Pollution Cleanup and Abatement Account within 30 days of receipt of notice by the Executive

Officer that the SEP has not been satisfactorily completed. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to complete the approved SEP within a time schedule set by the Executive Officer.

_____ Name (print)	_____ Signature
_____ Date	_____ Title/Organization

**Table 1: Effluent Limit Violations - City of Calistoga (January 1, 2000 Through March 31, 2002)**

[illegible]

fte  
California Regional Water Quality Control Board  
San Francisco Bay Region  
Winston H. Hickox Internet Address: <http://www.swrcb.ca.gov>  
Secretary for 1515 Clay Street, Suite 1400, Oakland, California 94612  
Environmental Phone (510) 622-2300 • FAX (510) 622-2460  
Protection

Date: ' ) ~% ~- o ?00' \_J  
CERTIFIED MAIL NO. 70020860000530607947 File No. 2139.3003(ES)  
RETURN RECEIPT REQUESTED

Mr. Steve Anderson  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Subject: Mandatory Minimum Penalty Assessed Under Water Code Sections 13385(h)  
and (i)

Dear Mr. Anderson:

(a

Gray Davis

Governor

Enclosed is Complaint No. R2-2002-0015. The Complaint alleges that there were  
29 effluent

violations of your NPDES permit limits during the period between January 1,  
2000 and March

31, 2002. The details of these violations are summarized in Table 1 of the  
Complaint. Twenty-

three of these violations are subject to mandatory penalties under Sections  
13385(h) and (i) of the

California Water Code for a total penalty of \$69,000.

I plan to bring this matter to the Regional Board at its January 22, 2003  
meeting. You have three

options:

1. You can appear before the Board at the meeting to contest the matter.

Written comments

are due by January 2, 2003. At the meeting the Board may impose an  
administrative civil

liability in the amount proposed or for a different amount; decline to seek  
civil liability;

or refer the case to the Attorney General to have a Superior Court consider  
imposition of  
a penalty.

2. You can waive the right to a hearing by signing the last page of the  
Complaint and  
checking the first box. There will be no hearing on this matter, provided no  
significant

public comment is received by Board staff prior to close of the comment period.

By

doing so, you agree to pay the liability within 30 days of the signed waiver  
becoming

effective.

You can waive the right to a hearing and agree to undertake a Supplemental  
Environmental Project (SEP) by signing the Waiver and checking the second box.

There

will be no hearing on this matter, provided no significant public comment is  
received by

Board staff prior to close of the comment period. By doing so, you agree to  
complete a

SEP in lieu of paying a suspended amount of up to \$42,000 of the penalty and  
remit the

balance of the fine to the State Water Pollution Cleanup and Abatement Account  
within

thirty days of the signed waiver becoming effective. Note that the SEP must be  
acceptable to the Executive Officer of the Board. If the Executive Officer

determines

that, either SEP proposal is not acceptable, or the SEP is not adequately  
completed within

The energy challenge facing California is real. Every Californian needs to take  
immediate action to reduce energy consumption. For a list of

simple ways you can reduce demand and cut your energy costs, see our Web-site

at <http://www.swrcb.ca.gov>.

City of Calistoga -2- MMP R2-2002-0015

the approved time schedule, you will be required to pay the suspended liability within 30 days of notification by the Regional Board. Please mail and fax a copy of the signed waiver to Eddy So's attention at (510) 622-2418 no later than January 2, 2003.

If you have any questions please call Eddy So at (510) 622-2418,  
Sincerely,

Loretta K. Barsamian  
Executive Officer

Encl.: Complaint No. R2-2002-0015

Cc: Greg Walker, RWQCB

James Nusrata, RWQCB

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of

simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

MMP R2-2002-0015

City of Calistoga

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION  
COMPLAINT NO. R2-2002-0015  
MANDATORY MINIMUM PENALTIES  
IN THE MATTER OF  
CITY OF CALISTOGA  
NAPA COUNTY

Pursuant to California Water Code Section 13385, this Complaint is issued to the City of Calistoga (hereinafter the Discharger) to assess mandatory minimum penalties to, based on a finding of violations of Waste Discharge Requirements Order Nos. 92-062 and 00-131 (NPDES No. CA0037966) known to the Regional Board for the period between January 1, 2000 and March 31, 2002.

The Executive Officer finds the following:

1. On June 17, 1992, the Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), adopted Waste Discharge Requirements Order No. 92-062 to regulate discharges of waste from the Discharger's treatment plant, which provides tertiary level treatment of municipal wastewater from domestic and commercial sources within the City of Calistoga. The Discharger's facility is a publicly owned treatment work (POTW).

2. The discharge of treated effluent to the Napa River during the wet weather is governed by the NPDES permit, which prohibits any discharge to the Napa River during the dry weather. During the wet weather, treated effluent is discharged to a non-tidal reach of the Napa River through two submerged outfalls extending from the eastern bank of the river. Outfall E-1 is for the discharge of tertiary-treated effluent, and outfall E-2 is for the discharge of secondary-treated effluent.

3. On November 29, 2000, the Regional Board adopted Waste Discharge Requirements Order No. 00-131, which superseded Order No. 92-062, to continue regulating the discharges of treated wastewater from the two outfalls. Provision 20 of the Order states Order No. 00-131 becomes effective 10 days after its adoption.

4. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation.

5. Water Code Section 13385(h)(2) defines a "serious violation" as any waste discharge of a Group I

pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.

6. Water Code Section 13385(i) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six consecutive months:

- a) Violates a waste discharge requirement effluent limitation.
- b) Fails to file a report pursuant to Section 13260.
- c) Files an incomplete report pursuant to Section 13260.

MMP R2-2002-0015

City of Calistoga

d) Violates a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

7. Water Code Section 13385(k) allows the Regional Board to elect to require a POTW serving a small community', as defined in Water Code Section 79084, to spend an equivalent amount of all or a portion of the mandatory penalties toward the completion of a compliance project (CP) proposed by the POTW, if the state or regional board finds all of the following:

- a) The CP is designed to correct the violations within five years.
- b) The CP is accordance with the enforcement policy of the state board.
- c) The POTW has demonstrated that it has sufficient funding to complete the CP.

8. Water Code Section 13385(1) allows the Regional Board, with the concurrence of the discharger, to direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP) in accordance with the Water Quality Enforcement Policy (Enforcement Policy) adopted by the State Water Resources Control Board (State Board) on February 19, 2002. The maximum penalty amount that may be expended on a SEP may not exceed \$15,000 plus 50 percent of the penalty amount that exceeds \$15,000.

#### 9. Effluent Limitations

a) Order No. 92-062 includes, in part, the following effluent limitations for effluents discharged from outfalls E-1 and E-2:

Parameter	Type of Limit Discharge	Outfall E-1 Discharge	Outfall E-2
pH	Not less than 6.5 or eater than 8.5	Not less than 6.5 or eater than 8.5	
Total coliform Organisms	Daily maximum MPN/100 mL	240	240
	Moving median of 5-sample	Not applicable	23
	MPN/100 mL		
	Moving median of 7-sample	2.2	Not applicable
	MPN/100 mL		
Biochemical oxygen demand	Daily maximum m L	20	60
	Monthly average m /L	10	30
BOD	Percentage removal %	Minimum 85	Minimum 85

California Water Code Section 79084 defines a small community as including a municipality with a population of 10,000 persons or less with a financial hardship as detemuned by the State Board. The Enforcement Policy, adopted on 2/19/2002, defines financial hardship as when the median annual household income for the community is less than 80% of the California median annual household income. The Enforcement Policy further defines that "median annual household income" means the

median annual household income of the community based on the most recent census data or a local survey approved by the State Board.

Year-2000 census data show that the City of Calistoga has a population of 5,200 persons and a median annual household income of \$25,000 in year 2000. The median annual household income of the State of California in year 2000 is \$46,900. \$25,000 is less than 80% of \$46,900 (which equals to \$37,520), and thus, the Discharger meets the definition of "small community" that has a financial hardship.

MMP R2-2002-0015

City of Calistoga

Parameter	Type of Limit	Outfall E-1		Outfall E-2
cont'd	Discharge	Discharge		
Total suspended Solids (TSS)	Daily maximum m	30	60	
	Monthly average m L		15	30
	Percentage removal %	Minimum 85		Minimum 85
Oil & Grease	Daily maximum m	10	20	
O&G	Monthly average m	5	10	
Bioassay toxicity	Percentage survival %	Minimum 70		Minimum 70

b) Order No. 00-131 includes, in part, the following effluent limitations for effluents discharged from outfalls E-1 and E-2:

Parameter	Type of Limit	Outfall E-1		Outfall E-2
	Discharge	Discharge		
pH	Not less than 6.5 or eater than 8.5	Not less than 6.5 or eater than 8.5		
Total coliform ml, bacteria	Daily maximum (MPN/100 ml, Moving median of 5-sample MPN/100 mL)	240	240	
Biochemical oxygen demand	Daily maximum m	20	60	
	Monthly average (mg/L)	10	30	
BOD	Percentage removal %	Minimum 85		Minimum 85
Total suspended solids (TSS)	Daily maximum (mg/L)	30	60	
	Monthly average m L		15	30
	Percentage removal %	Minimum 85		Minimum 85
Oil & Grease (O&G)	Daily maximum m L	10	20	
	Monthl average m	5	10	
Cyanide	Daily maximum L	8.2	8.2	

#### 10. Summary of Effluent Limit Violations

During the period between January 1, 2000 and March 31, 2002, the Discharger had 29 violations of effluent limitations contained in its NPDES permit. These include 5 violations of oil and grease effluent limits, 6 violations of total suspended solids effluent limits, 5 violations of biochemical oxygen demand effluent limits, 7 violations of total coliform effluent limits, 1 violation of the pH effluent minimum limit, 2 violations of the cyanide effluent limit, and 3 violations of the bioassay toxicity minimum survival effluent limit. The details of these effluent limit violations are summarized in the attached Table 1, which is incorporated herein by reference. Because two different Board Orders regulated the effluent discharged from the wastewater treatment plant during the period covered by this Complaint, effluent limit violations were summarized under the applicable Board Orders and time periods.

MMP R2-2002-0015

City of Calistoga

#### 11. Oil and grease is Group I pollutant

All five exceedances of oil and grease daily maximum and monthly average limits (items 1, 2, 9, 15, and 17 in the Table 1) are serious violations, as these violations

are 40% or greater than the corresponding effluent limitations. Each of these five serious violations is subject to \$3,000 fine, with the total penalty amount for these violations being \$15,000.

12. Total suspended solids is Group -I pollutant

a) Two violations of the total suspended solids effluent limit (items 18 and 29 in the attached table) are serious violations, as the exceedances are 40% or greater than the corresponding limits. Each of these two serious violations is subject to \$3,000 fine, and the total penalty amount for these serious violations is \$6,000.

b) The four exceedances of the total suspended solids monthly average and percentage removal limits (items 7, 8, 21 and 24 in the attached table) are non-serious violations, as these violations are less than 40% of the corresponding effluent limitations. Only one violation (item 21) is exempted from penalty because it is the third non-serious violation in the corresponding six-month period. Therefore, the total penalty amount for these non-serious violations is \$9,000.

13. Biochemical oxygen demand is Group I pollutant

a) One violation of the biochemical oxygen demand monthly average limit (item 28 in the attached table) is a serious violation, as the exceedance is 40% of the corresponding limit. This serious violation is subject to \$3,000 fine.

b) The four exceedances of the biochemical oxygen demand monthly average and percentage removal limits (items 16, 19, 20, and 23 in the attached table) are non-serious violations, as these violations are less than 40% of the corresponding effluent limitations. Because three of these violations are within the first three non-serious violations in their corresponding six-month periods and are exempt from mandatory minimum penalty, the total penalty amount for these non-serious violations is \$3,000.

14. Total Coliform is neither a Group I nor Group II pollutant  
The seven exceedances of total coliform daily maximum and 5-sample median effluent limits (items 6, 10, 11, 12, 13, 26 and 27 in the attached table) are non-serious violations. Because none of these violations are within the first three non-serious violations in their corresponding six-month periods, all are subject to \$3,000 fine for each violation. The total penalty amount for these non-serious violations is \$21,000.

15. pH is neither a Group I nor Group pollutant

The one exceedance of the pH effluent minimum limit (item 14 in the attached table) is a non-serious violation. Because it is the first non-serious violation in the corresponding six-month period and is therefore exempt from mandatory minimum penalty.

16. Cyanide is a Group II pollutant

The two exceedances of the cyanide daily maximum effluent limit (items 22 and 25 in the attached table) are non-serious violations, as the exceedance in each case is less than 20% of the limit.

Because none of these violations are within the first three non-serious violations in their corresponding 180-day periods, both are therefore subject to \$3,000 fine for each violation. The total penalty amount for these non-serious violations is \$6,000.

MMP R2-2002-0015

City of Calistoga

17. Bioassay Toxicity is neither a Group I nor Group II pollutant

The three exceedances of the bioassay toxicity minimum survival



limit (items 3, 4, and 5 in the attached table) are non-serious violations. Only one violation (item 3) is exempt from mandatory minimum penalty because it is the third non-serious violation in the corresponding 180-day period. Therefore, the total penalty amount for these non-serious violations is \$6,000.

18. Water Code Exception  
Water Code Section 133850) provides some exceptions related to the assessment of mandatory penalties for effluent limit violations. None of the exceptions applies to the violations cited in this Complaint.

19. Mandatory Minimum Penalty Assessment  
The total mandatory minimum penalty for the twenty-three of the 29 effluent limit violations described in Findings 10 through 17 are \$69,000.

20. Suspended Mandatory Minimum Penalty Amounts

a) Instead of paying the full penalty amount, the Discharger may spend an amount of up to \$42,000 on a SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete a SEP will be permanently suspended.

b) In addition to the penalty amount suspended for the SEP as indicated in (a) above, the Discharger may also spend the remaining balance of \$27,000 on a CP, as described in Water Code Section 13385(k) and the Enforcement Policy. Specifically, the Discharger may undertake the CP described in its November 15, 2002 proposal to install a dissolved oxygen (DO) monitoring and control system for its aeration process. The proposed CP, which consists of the procurement and installation of four DO meters and the development of a DO control program, is to improve the performance of the aeration units to enhance the treatment plant's compliance with the BOD limitations. It is a plant upgrade project designed to correct the BOD violations addressed in this Complaint. The Discharger indicated that the CP could be completed within a few weeks, which is well within the five-year time period specified in Water Code Section 13385(k). The Discharger further confirmed that it has sufficient fund to complete the CP, as the treatment plant has between \$30,000 and \$100,000 in capital improvement funds approved by the City Council.

The proposed CP complies with the conditions A and C of Section X of the Enforcement Policy.

THE CITY OF CALISTOGA IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed a mandatory minimum penalty in the amount of \$69,000.

2. The Regional Board will hold a hearing on this Complaint on January 22, 2003, unless the Discharger waives the right to a hearing by signing the last page of this Complaint and check the appropriate box.

By doing so, the Discharger agrees to:

(a) Pay the full penalty of \$69,000 within 30 days after the signed waiver becomes effective, or  
(b) Satisfactorily complete an approved SEP in the amount equivalent to a maximum of \$42,000.

Pay a penalty of the balance within 30 days after the signed waiver becomes effective. The sum of the SEP amount, and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$69,000, or

(c) Satisfactorily complete an approved SEP in an amount equivalent

to \$42,000 and spend the remainder, \$27,000, on the CP described in its November 15, 2002, proposal.

MMP R2-2002-0015

City of Calistoga

3. If the Discharger chooses to propose a SEP, it must submit the proposal by January 2, 2003 to the Executive Officer for approval. Any proposal for the SEP shall also conform to the requirements of the Enforcement Policy. If the proposal is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended penalty for the SEP. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.

4. If the Discharger chooses to proceed with the CP described in its November 15, 2002 proposal, then the Discharger shall expend \$27,000 to complete the CP in a timely manner, no later than one year from the effective date of the signed waiver. The Discharger shall submit a completion report for the CP to the Executive Officer within 60 days of project completion. The Executive Officer reserves the right to extend the deadline for completion of the CP provided the Executive Officer determines that the delay is beyond the reasonable control of the Discharger. If the Discharger satisfactorily completes the CP, then the suspended amount for the CP is permanently suspended; otherwise, the suspended amount becomes due and payable to the State Water Pollution Cleanup and Abatement Account within 30 days of receipt of notice by the Executive Officer that the CP has not been satisfactorily completed. Nothing stated herein relieves the Discharger of its obligation to take necessary actions to achieve compliance with its permit.

5. The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.

6. If a hearing is held, the Regional Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider imposition of a penalty.

6f,Gd~..

w4az' e.

Loretta K. Barsamia`~

Executive Officer

y~~,,~, ~ 2w z

Date

MMP R2-2002-0015

City of Calistoga

WAIVER

(The signed waiver will become effective upon closure of the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public

comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.)

G Waiver of the right to a hearing and agree to make payment in full.

By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2002-0015 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.

O Waiver of the right to a hearing and agree to make payment and undertake a SEP.

By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2002-0015, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$42,000. I also agree to remit payment of \$27,000 to the State Water Pollution Cleanup and Abatement Account within 30 days after the signed waiver becomes effective. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the SEP within 30 days of a letter from the Executive Officer denying the approval of the proposed SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer.

O Waiver of the right to a hearing and agree to undertake a SEP and the CP

By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2002-0015, and to complete (1) a SEP for an equivalent amount of suspended liability up to \$42,000 and (2) the \$27,000 compliance project (CP), as described in our November 15, 2002 letter and in accordance with the requirements set forth in the Complaint. With respect to SEP, I understand that the proposal for the SEP shall conform to the requirements specified in the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal is not acceptable to the Executive Officer and

upon receipt of the  
Executive Officer's letter denying the proposed project, I agree to  
pay the suspended  
liability of the SEP within 30 days of a letter from the Executive  
Officer denying the  
approval of the proposal(s). I understand that failure to  
adequately complete the  
approved SEP will require payment of the suspended amount to the  
State Water Pollution  
Cleanup and Abatement Account within 30 days of receipt of notice  
by the Executive  
MMP R2-2002-0015  
City of Calistoga  
Officer that the SEP has not been satisfactorily completed. I  
also understand that I am  
giving up my right to argue against the allegations made by the  
Executive Officer in the  
Complaint, and against the imposition of, or the amount of, the  
civil liability proposed. I  
further agree to complete the approved SEP within a time schedule  
set by the Executive  
Officer.

Name (print)

Date

Signature

Title/Organization

o ° o g ° o ° o g g ° o o \$ o ° 0 0 o p 0 ° o \$ o ° o " 0 0 0 0 0 0 0 0 0 0

0

~"a ~"a h h o q o - ; a a a a h h h O o

h , Ow - • - . . . . . ~ O ~ D N N N V ' V < t V C ^ o 0 0 0 N N

O

O

O

A 0 ~

O

O O O

O O

O

h 111 h h ~ O ~ ~ O ~ ~ O h h h h h h O o O O O O s ~ 9 ~ b N 9

z z z M M M M M M M M M M z - ' z z z z " z M M M M M M

O 69 b9 b9 69 b9 V) 69 69 b9 Vi 69 69 b9 69 69

F

O

O

O O O p p O O O O ' S

O O O O O

O

d M M M M M M b M 9 f i M 9 6 N 9

h V f b9 69 b9 b9 f H

d

O M O O O O ~ . - . O

a o p v 1 ∞ l ~ N M O p N ~ D ~ O , ~ N V

O O O ~ p i p N N , ~ . ~ v a r M N C o 0 0 0 0 M M V a t ~ l

u d

O O O O V 1 - h , O M M M ~ n O O O O ~ n v 1 V 7 N O O N M O O V W

d . % N h ( ~ l ~ N o 0 N k k N ~ p N k M G o 0 e k 0 a k 0 N O u m

E ' a o d

w t ~ ~ a a

v w

C 7 ~ ~ ° ~ 3

o w m

0 0 > R ~ , d

0 0 o a U N O d U d

C I O b y o p ~ ' , O A b D

E I N N

e 0 e n ' p 0 O a ~

0 0 E A c c a ~ , E O d 8 a a . ~

a r a d o o f o 0 0 o d g o i w w e ° a o 4 e o ° \_ d a o v i

O ~ " C ~ . > . . > . . > . \_ T 4 s G E T p ,

:º. 0º0 b x a b a o b b , ~ c A A a b 7 o W C . v  
O O U a) N y O y N O f f ( O O . ~ O w L O F  
C T ~ n i n i n , ' ~ T Q ' ~ O A . ~ , i T C ~ ~ f A A O  
c O O o ~ , T , c  
h H ( - v i , a h h . ? ` e o c 0 r o e a ° ' r o o ° n c i , m h n e ~ q v i  
w ~ A . u ` ~ ` A , p A v a v , v , p % 0 . , ' o ' h ~ " A k h A K d 1 ~ w o 0  
p y y k k k h O N y N r . L ' . C ' ~ y N O y [ . ~ 7  
O O P C i s O  
d ( 7 C 7 A a " U a n O U U U U ~ O ~ C 7 h 0 . 1 W E - U . h : o U r i i  
A ~ S 3 3 ` ~ a C ° ~ 5 1 9 5 9 o d d 5 5 5  
0 0 0 o T o 0 0 . e a  
0 0 0  
o a o - ' 0 0 0 o x  
O O W C Y O P . 1 ( - • E - O F • E • E • F - a O 0 . 1 O F - W E - U I - E ~ 0 . 1 f - , ~ y c . 5  
G C C C G C w G C C C C C C ~ ' C . C G G W W W W p C C C C F G O  
U U U U U a ) b U U U U U U U U U U U b ' O b N - U N U U U U U  
P P 7 O O a ) O O 7 7 O ~ 7 ~ 7 7 O N a ) N O 7 d ? 7 a 7 ~ o C  
W W W W W W p W W W W W W W W W W W W p p 3 l W W W W W W W . o q o K  
. - . N ^ N N N p ^ N N N N N . ~ N N ~ V N Q ~ ' Q ^ N N - • N N N N O ~ h  
7 9  
w U w u a w w w w u a w w w w U U w w w w w w w h h z  
w w w w w  
0 0  
a p p N N N N N N N N N z  
G l 0 0 \_ 0 \_ 0 0 0 O g p \_ O ~ ~ O O O ~ O O O O O O p p 0 0  
, O A M ~ ~ ~ ^ ` N N N N M ~ ~ ~ ^ M ~ M M M ~ ~ ~ M ~ M N v v M M A  
^ N N N N N N N N M t r l M M M ^ N M M M M a q  
C  
N ~ r  
p ~ ~ M V h ~ O ~ o o ~ O ^ N M V h ~ O 1 ~ o 0 0 1  
^ N M C h ~ O t ~ 0 0 O ~ . ~ . - n N N N N N N N N N N , , ,  
z z z  
Z 9 0 - Z 6 ' O N J a P A O u 1 s 7 1 W I ' l W a n p y g J o s u 0 1 1 e 1 0 1 A l £ 1 - 0 0 ' O A l a a P J 0 u 1 s l l u n l  
a u a n U J 3 J 0 s u 0 1 1 7 9 1 0 1 A